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See
C. Garrison,
attached.

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1958

November 24

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CONCORD, N.H.

Mr. John O. Morton, Commissioner
Department of Public Works and Highways
State House Annex
Concord, New Hampshire

Re: LISDON 3 229 (1), S-3249

Dear Mr. Morton:

I am handing you herewith the three (3) copies of the proposed contract between the State and one Roy C. Abbott, together with a copy of a letter which I have this date addressed to the Governor and Council with reference to said proposed contract.

It is the essence of my letter to the Governor and Council that in determining the amount which Mr. Abbott bid for this job the item "MORTAR RUBBLE MASONRY" should be computed at the rate of \$0.45 (45¢) per cubic yard, and that "LEDGE EXCAVATION" should be computed at \$2.60 (2.60) per cubic yard. I arrived at these figures upon the basis of the proposal submitted by Mr. Abbott construed in the light of the Standard Specifications of your Department in this regard.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/lb

Warren E. Waters
Deputy Attorney General

November 14, 1958

Lisbon S229, (1) S-3349

Governor and Council

In a conference this date I expressed certain views to the Governor and Council concerning the proposal submitted in the above entitled matter by one Mr. Roy C. Abbott; and in accordance with your request I am putting in writing the views which I stated to you.

Mr. Abbott submitted his bid for this contract on the proposal form supplied by the State. This form contains a line for each item of work to be done, which line is separated into columns. The first two of these, starting from the left, show the item number and the approximate unit quantities involved. The next column provides a place in which the bidder is intended to write in words the unit price at which he offers to do the particular item of work. The next column is for the insertion of the unit price in figures, while the last column - that on the extreme right - is for his use in showing the product of the approximate number of units multiplied by the proposed unit price.

The proposal was submitted, as required, in accordance with the Standard Specifications for Road & Bridge Construction approved July 1, 1954, of which Section 2.08, Preparation of Proposal, is quoted in part, below. The underlined material is deemed particularly important.

"2.08. Preparation of Proposal. The Bidder must submit his proposal schedule correctly filled in with the proposed unit prices (written in ink, both in words and numerals) for each and every item for which a quantity is given. He shall also show the product of each unit price and the quantity for each item in the column designated "Amount," and shall add these amounts to show the total sum of the proposal. In case of discrepancy in any item, the unit price written in words and the unit as given in the schedule shall govern."

In consideration of the question of the amount for which Mr. Abbott had bid to do this job, it became necessary to interpret the effect of the manner in which he filled out the proposal form - in the light of the quoted language - with regard to two items: 38.4 Mortar Rubble Masonry and Item 5.2 Ledge Excavation.

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Governor and Council

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In connection with the item Mortar Rubble Masonry, in the space provided for stating the price proposed per cubic yard in words there were written "Forty-five cents". In the adjacent column, where the unit price is set forth in figures there appeared "[\$]45-". The last column, that used for extension, shows "[\$]2,115-" Since the approximate quantities for this item was 47 cubic yards it is obvious that the figure by which 47 was multiplied was \$4500.

I advised the Governor and Council that in my judgment and having regard for the language of the Standard Specifications quoted, Mr. Abbott was to be held to have bid forty-five cents per cubic yard for this item. It is understood that forty-five cents per cubic yard for work of this type is an inordinately low figure, and it is seen, of course, that it does not accord with the unit price and the extension thereof set forth. Yet, the words which Mr. Abbott wrote - "Forty-five cents" - are clear and unequivocal. They admit of no other than the obvious interpretation. The Standard Specifications quoted govern, and the bidder is to be deemed to have intended forty-five cents.

The matter of ledge excavation presents a different problem, one which is not solved by reference to the Standard Specifications. With respect to this item, in the space provided for writing in the amount of his proposal, Mr. Abbott set forth "Two Dollars & cents" per cubic yard. Opposite this item he entered "[\$]2.60", and in the final column he set forth "[\$]1820-". It is noted that the approximate quantity involved was 700 yards; and that 700 multiplied by \$2.60 equals \$1,820.

With respect to this item I advised the Governor and Council that the written words concerning price were ambiguous and that the amount intended by the bidder could not be determined except with reference to extrinsic matters. Thus, it was obvious that Mr. Abbott intended not only that he should receive \$2.00 for this work but also an indeterminate amount of cents. By reference to the adjacent column it was clear that he intended the number of cents to be sixty. Accordingly I advised the Governor and Council that Mr. Abbott was to be deemed to have submitted a bid of \$2.60 for the item "Ledge Excavation".

It is our conclusion, then, that in determining the total amount of Mr. Abbott's bid, Mortar Rubble Masonry should be computed at the rate of \$0.45 per cubic yard, and Ledge Excavation at \$2.60 per cubic yard.

A copy of this letter is being sent to the Department of Public Works & Highways.

Very truly yours,

WEW/m

Warren E. Waters, Deputy Attorney General